

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0556-AGR-E TCEQ ID: RN102900818 CASE NO.: 33154
RESPONDENT NAME: Cottonwood Auction Barn, L.L.C.

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Cottonwood Auction Barn, located on the south side of State Highway ("SH") 6, approximately 3.5 miles west of the intersection of SH 377, SH 67 and SH 6, Erath County</p> <p>TYPE OF OPERATION: Auction barn</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 16, 2006. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lynley Doyen, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-1364; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896 Respondent: Mr. Larry Dee Gibson, Director, Cottonwood Auction Barn, L.L.C., 1382 County Road 521, Dublin, Texas 76446 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 7, 2007</p> <p>Date of NOE Relating to this Case: March 16, 2007 (NOE)</p> <p>Background Facts: This was a routine records review. One violation was documented.</p> <p>WATER</p> <p>Failure to develop and operate under a comprehensive nutrient management plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB"). Specifically, a CNMP was submitted to the TSSWCB for review, but the Respondent failed to respond to requests for additional information from the TSSWCB and the TCEQ [30 TEX. ADMIN. CODE § 321.42(s)]</p>	<p>Total Assessed: \$1,840</p> <p>Total Deferred: \$368 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,472</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on March 23, 2007, Cottonwood began operating under a comprehensive nutrient management plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB").</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 9, 2007

TCEQ

DATES	Assigned	19-Mar-2007	Screening	4-Apr-2007	EPA Due	
	PCW	4-Apr-2007				

RESPONDENT/FACILITY INFORMATION

Respondent	Cottonwood Auction Barn, L.L.C.		
Reg. Ent. Ref. No.	RN102900818		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	33154	No. of Violations	1
Docket No.	2007-0556-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Lynley Doyen
Multi-Media		EC's Team	EnforcementTeam 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$2,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **2% Enhancement** **Subtotals 2, 3, & 7** **\$40**

Notes

The penalty is enhanced due to one prior NOV with violations not same or similar to those cited in this action.

Culpability

No

0% Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

10% Reduction

Subtotal 5

\$200

Extraordinary

Before NOV

NOV to EDP RP/Settlement Offer

Ordinary

X

N/A

(mark with x)

Notes

The Respondent came into compliance on March 23, 2007.

0% Enhancement*

Subtotal 6

\$0

Total EB Amounts

\$157

Approx. Cost of Compliance

\$10,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal

\$1,840

OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment

\$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount

\$1,840

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

\$1,840

DEFERRAL

20%

Reduction

Adjustment

-\$368

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$1,472

Screening Date 4-Apr-2007

Docket No. 2007-0556-AGR-E

PCW

Respondent Cottonwood Auction Barn, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 33154

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN102900818

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The penalty is enhanced due to one prior NOV with violations not same or similar to those cited in this action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 2%

Screening Date 4-Apr-2007

Docket No. 2007-0556-AGR-E

PCW

Respondent Cottonwood Auction Barn, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 33154

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN102900818

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 321.42(s)

Violation Description

Failed to develop and operate under a comprehensive nutrient management plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB"). Specifically, a CNMP was submitted to the TSSWCB for review, but the Respondent failed to respond to requests for additional information from the TSSWCB and the TCEQ.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

46 Number of violation days

mark only one
with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,000

Two monthly events are recommended from the February 5, 2007 deadline to submit requested information to the TSSWCB until the CNMP was certified and implemented on March 23, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$157

Violation Final Penalty Total \$1,840

This violation Final Assessed Penalty (adjusted for limits) \$1,840

Economic Benefit Worksheet

Respondent: Cottonwood Auction Barn, L.L.C.
Case ID No: 33154
Reg. Ent. Reference No: RN102900818
Media: Water Quality
Violation No: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$10,000	31-Dec-2006	23-Mar-2007	0.2	\$7	\$150	\$157
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and implement a comprehensive nutrient management plan. Date required is the date the plan was required to be certified and implemented. Final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$157

Compliance History

Customer/Respondent/Owner-Operator:	CN602649568 Cottonwood Auction Barn, L.L.C.	Classification: AVERAGE	Rating: 0.20
Regulated Entity:	RN102900818 COTTONWOOD AUCTION BARN	Classification: AVERAGE	Site Rating: 0.20
ID Number(s):	WASTEWATER AGRICULTURE WASTEWATER AGRICULTURE WASTEWATER	PERMIT PERMIT EPA ID	WQ0004136000 TX0131156 TX0131156
Location:	LOCATED ON THE S SIDE OF SH 6, APPROX 3.5 M W OF THE INTX OF SH 377, SH 67, & SH6, ERATH CO, TX	Rating Date: 9/1/2006 Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	April 02, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	April 02, 2002 to April 02, 2007		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name: Lynley Doyen	Phone: 512-239-1364		

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 03/21/2003 (26885)
2 03/12/2004 (265456)
3 07/28/2005 (401378)
4 04/06/2006 (456857)
5 11/22/2006 (519342)
6 03/15/2007 (543158)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 08/05/2005 (401378)

Self Report? NO
Citation: 30 TAC Chapter 321, SubChapter B 321.41(a)(1)
Description: Failure to complete Required DOPA training.

Classification: Minor

- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
COTTONWOOD AUCTION
BARN, L.L.C.
RN102900818**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0556-AGR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Cottonwood Auction Barn, L.L.C. ("Cottonwood") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Cottonwood appear before the Commission and together stipulate that:

1. Cottonwood owns and operates an auction barn located on the south side of State Highway ("SH") 6, approximately 3.5 miles west of the intersection of SH 377, SH 67 and SH 6 in Erath County, Texas (the "Facility").
2. Cottonwood has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and Cottonwood agree that the Commission has jurisdiction to enter this Agreed Order, and that Cottonwood is subject to the Commission's jurisdiction.
4. Cottonwood received notice of the violations alleged in Section II ("Allegations") on or about March 21, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Cottonwood of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand Eight Hundred Forty Dollars (\$1,840) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Cottonwood has paid One Thousand Four Hundred Seventy-Two Dollars (\$1,472) of the administrative penalty and Three Hundred Sixty-Eight Dollars (\$368) is deferred contingent upon Cottonwood's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Cottonwood fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Cottonwood to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Cottonwood have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on March 23, 2007, Cottonwood began operating under a comprehensive nutrient management plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB").
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Cottonwood has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, Cottonwood is alleged to have failed to develop and operate under a CNMP certified by the TSSWCB, in violation of 30 TEX. ADMIN. CODE § 321.42(s), as documented during a record review conducted on March 7, 2007. Specifically, a CNMP was submitted to the TSSWCB for review, but Cottonwood failed to respond to requests for additional information from the TSSWCB and the TCEQ.

III. DENIALS

Cottonwood generally denies each allegation in Section II ("Allegations").

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IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Cottonwood pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Cottonwood's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Cottonwood Auction Barn, L.L.C., Docket No. 2007-0556-AGR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon Cottonwood. Cottonwood is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Cottonwood in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Cottonwood, or three days after the date on which the Commission mails notice of the Order to Cottonwood, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Green
For the Executive Director

8/21/2007
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Larry Dec Gibson
Signature

5-14-07
Date

Larry Dec Gibson
Name (Printed or typed)
Authorized Representative of
Cottonwood Auction Barn, L.L.C.

Pres. & member
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

